STATE OF MICHIGAN

COURT OF APPEALS

AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
July 10, 2003

No. 230834
Livingston Circuit Court
LC No. 00-017867-NF

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff's motion for satisfaction of judgment and the court's denial of defendant's summary disposition motion under MCR 2.116(C)(7). We reverse.

This case is the culmination of lengthy legal disputes involving the payment of certain insurance benefits resulting from an automobile accident. Defendant paid the benefits and then brought suit to recover the amount paid. The trial court entered judgment against plaintiff. In this independent equitable action, plaintiff claimed that the judgment in the prior case was based on a miscalculation made by defendant, and thus, was excessive, and sought relief from that judgment.

Defendant argues that the trial court erred when it granted plaintiff relief from judgment in an independent equitable action. We agree. This Court reviews de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(7). *Limbach v Oakland Co Bd of Comm'rs*, 226 Mich App 389, 395; 573 NW2d 336 (1997).

While this is an independent action for equitable relief from judgment, our analysis begins with reviewing an aggrieved party's options in the underlying suit. MCR 2.612(C)(1) provides:

> On motion and on just terms, the court may relieve a party . . . from a final judgment . . . on the following grounds:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.

> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> (d) The judgment is void.
>
> (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
>
> (f) Any other reason justifying relief from the operation of the judgment.

If one of these reasons for relief applies, then the moving party must bring a motion for relief from the judgment within a reasonable time, and in the case of subsections (a), (b), and (c), within a year after the trial court enters judgment. MCR 2.612(C)(2). However, MCR 2.612(C)(3) provides, "[t]his subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment . . . ."

With regard to an independent action, in *Trost v Buckstop Lure Co*, 249 Mich App 580, 589; 644 NW2d 54 (2002), this Court held that a party may only bring an independent action for relief from judgment if:

> (1) the judgment is one that ought not, in equity and good conscience, be enforced, (2) there is a valid defense to the alleged cause of action on which the judgment is founded, (3) fraud, accident, or mistake prevented the defendant from obtaining the benefit of the defense, (4) there was no negligence or fault on the part of the defendant, and (5) there is no adequate remedy available at law.

Our Supreme Court has held, however, that "the court rules are a primary source for determining the means by which a person aggrieved by a judgment may seek to remedy the situation." *Daoud v De Leau*, 455 Mich 181, 200; 565 NW2d 639 (1997). Thus, the existence of an alternative rule that could have applied, does impact whether an independent action is available. *Id*.

In this case, plaintiff fails to meet the fourth requirement of *Trost*, *supra* at 589. Plaintiff knew of defendant's mistaken calculations within six months after the trial court entered the judgment, but failed to bring a motion under MCR 2.612(C)(1). The only explanation plaintiff argued for its failure to bring such a motion in the underlying action is that defendant did not respond to a telephone call and letter from plaintiff regarding "problems" plaintiff had "justifying" the judgment.

Plaintiff's letter and call, however, failed to put defendant on notice of any specific miscalculation; rather, they indicated only a general confusion regarding the high amount of the judgment and a willingness to negotiate. Defendant, by that time, had already achieved a judgment. Furthermore, the judgment was pending appeal in this Court during plaintiff's

attempts at renegotiation. Once defendant obtained its judgment, nothing required it to enter time-consuming negotiations and costly audits on vague complaints that the judgment was generally excessive. Rather, the onus was on plaintiff to bring evidence of the judgment's errors to the court's attention when the miscalculations were discovered. Therefore, plaintiff's reason for delaying until it could no longer bring a motion under MCR 2.612(C)(1) does not qualify as "good excuse," and plaintiff's negligence in failing to bring a timely motion precluded it from receiving relief in an independent action. See 3 Michigan Court Rules Practice § 2612.17, p 484.[1]

As an alternative argument, defendant argues that the trial court erred when it granted plaintiff's motion to enter satisfaction of judgment without an evidentiary hearing to determine whether the judgment had been satisfied. Although resolution of this issue is unnecessary, we note that a motion for satisfaction of judgment is a motion to determine whether a party has actually paid the judgment, not a motion to decrease the judgment until the amount actually paid satisfies it. See *Oakwood Hosp v Tobin*, 6 Mich App 566, 570; 149 NW2d 890 (1967). Therefore the trial court erred in its application of MCR 2.620, and thus, erred when it summarily entered satisfaction of the judgment in this case.

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette

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[1] This commentary states:

> While MCR 2.612(C)(3) does not, of itself limit the power to grant equitable relief, certain limitations are imposed by general chancery jurisprudence. Thus an independent action for equitable relief will not be allowed when a party has failed to exhaust its legal remedies or has an adequate remedy at law. Equitable relief has been denied in cases where the parties had a remedy by appeal or by a motion for a new trial, though relief might be granted where that remedy had been lost without fault.
>
> These same principles should require denial of independent equitable relief when relief could have been obtained under MCR 2.612, unless there is a showing of extraordinary circumstances and some good excuse for failing to take action within the time provided by MCR 2.612.